Supreme Court, U.S.
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No. 97-1550

In The

Supreme Court of the United States

October Term, 1997

GUADALUPE ROJAS,

Petitioner,

v.

LAWRENCE FITCH, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

SUPPLEMENTAL BRIEF OF PETITIONER ROJAS

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QUESTIONS PRESENTED

1. Does *Agostini v. Felton*, ___ U.S. ___, 117 S.Ct. 1997 (1997), and other Establishment Clause precedent support the unemployment tax exemption which now expressly divides the universe of all non-profit, charitable, and educational employers into two categories, the religious and the secular, granting the exemption to the religious and denying it to the secular?

2. Where a statutory benefit on its face targets religion as the beneficiary, excluding similar but secular entities, does the government bear the burden of producing evidence of a secular purpose?

3. Does a statutory tax exemption granted to an employer, based on the employer's religious status, which operates to deny an employee eligibility for a Social Security Act benefit, contravene the Establishment Clause and prior decisions of this Court?

THE PARTIES

Guadalupe Rojas, Plaintiff and Petitioner

Lee H. Arnold, Director, R.I. Department of Employment and Training, Defendant, substituted for original defendant Lawrence Fitch, former Director.

Secretary, United States Department of Labor, Defendant

The Salvation Army, Defendant

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit is reported as *Rojas v. Fitch*, 127 F.3d 194 (1st Cir. 1997), and that decision affirmed the judgment of the District Court for the District of Rhode Island, *Rojas v. Fitch*, 928 F.Supp. 155 (D.R.I. 1996). By order dated December 18, 1997, the First Circuit denied the petition for rehearing and suggestion for rehearing en banc.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

Guadalupe Rojas submits this Supplement to her Petition, in accordance with Rule 15.8 of the Rules of the Supreme Court, in order to call attention to a Decision issued subsequent to her Petition. That decision, now published, is *Appeal of Springmoor*, 498 S.E.2d 177 (N.C. 1998), and it was issued on April 3, 1998.

In *Springmoor*, the North Carolina Supreme Court, with three Justices dissenting, found a state tax exemption statute to be violative of the Establishment Clause of the First Amendment, as well as a similar provision in the North Carolina Constitution. The statute at issue related to the tax status of homes for the aged, sick, or infirm. If such an entity was owned, operated, and managed by a religious or Masonic organization, then it was exempt from the applicable tax. If not, it was taxable. *Springmoor*, 498 S.E.2d at 179.

The majority opinion of the North Carolina Court reads the Establishment Clause caselaw in a manner very much at odds with the analysis of the Court of Appeals in

the present case. The *Springmoor* court correctly analyzed *Walz v. Tax Commissioner,* 397 U.S. 664, 90 S. Ct. 1409 (1970), as founded on the fact that New York was exempting not just churches but also similar secular entities which the state determined had a "beneficial and stabilizing influence in community life". *Springmoor* at 181.

Of particular relevance is the analysis of the entire exemption statute in North Carolina, which did include "a broad range of classifications." But that breadth did not insulate the exemption. The Court noted at 182:

> It is entirely appropriate to consider, in the context of determining whether this classification is proper, only the legislative treatment of all similarly situated non-profit homes for the aged, sick, or infirm.

The *Springmoor* decision then goes on to find that the statute had a principal or primary effect of advancing religion because it exempted religious institutions "while denying a similar benefit to identically situated secular homes". *Id.,* at 183.

The debate between the dissenters and the majority in *Springmoor* tracks the confusion inherent in the First Circuit's analysis in the present case. The dissent in *Springmoor* urged that since upwards of thirty or forty different types of property are exempt under the state's laundry list, there must be some general overriding secular purpose in the legislation, the same argument which has been stressed repeatedly to clothe the unemployment tax exemption with borrowed protection.

The *Springmoor* majority correctly asks whether the exemption for homes for the aged has a valid secular purpose, which it obviously could, and then finds the defect in the fact that:

> Religiously affiliated homes are singled out for a tax benefit denied to others that are similarly capable of carrying out the secular objective which the State may wish to encourage. *Id.* at 183.

In the present case, it was stipulated that if Rojas had worked for a similar non-profit social service employer, analogous to The Salvation Army in every way save one – the statutory pre-requisite of religion, she would have been protected by the unemployment benefit system because that employer would not have been exempt.

CONCLUSION

The issue of how the government, federal or state, may bestow a financial benefit on a category of institutions in our society, including religious institutions, is an issue of great importance. Contrasting the analysis and results in *Springmoor* with that of the First Circuit, and contrasting the competing Establishment Clause approaches of the majority and dissenting opinions in *Springmoor,* one comes to the conclusion that this Court should grant *certiorari* and clarify that the Court of

Appeals below has strayed from the neutrality principle of the Establishment Clause.

Respectfully submitted:

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